

A CHART
OF
HINDU FAMILY INHERITANCE,

WITH

Explan

BY

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PREFACE TO THE SECOND EDITION.

THE absence of any correct and intelligible work on Hindû Inheritance induced me to publish the first edition of this Chart and treatise some years ago ; and I have been much pleased to find that, small as the demand for a book of so limited interest must necessarily be, a steadily increasing sale has shown that my efforts have not been unappreciated. Some time ago, I was informed that the first edition was nearly exhausted, and I should have been able to offer a second edition to the public at an earlier date, had not the increased information now available necessitated a longer and closer application to the work than I at first anticipated. In Chapter I. the reader will find an enumeration of my fresh sources of information, which, I trust, will add much to the value of the work.

I may perhaps be allowed to allude to a circumstance which has afforded me much gratification. For some years after the first editions of my "Charts" were published, certain works already known to the public were recommended for study to young men preparing for the Civil Service of India,

and my Moohummudan and Hindû Charts were left unnoticed. By degrees, however, a great change came on. First the Moohuminudan Chart crept in, and afterwards the Hindû Chart. Finally, the older works entirely disappeared, and "Rumsey's Charts of Hindû and Moohummudan Inheritance," together with the "Tagore Lectures," were (and I believe are still) the only works recommended by Her Majesty's Civil Service Commissioners. Such a recognition cannot but be encouraging to one who began without the prestige of fame or office, and who had to contend with prejudices of many years' standing. How deeply rooted those prejudices were, would scarcely be believed by persons not intimately acquainted with the subject; but Sir E. Ryan's extravagant eulogium of Sir W. H. Macnaghten, cited by Lord Kingsdown with approval in *Rungama v. Atchama and others* (Moo. I. A. C. 89), and the observations of the last-mentioned judge and of the late Professor Wilson on the same topic, are standing instances of the extent to which even eminent men may allow their judgment to be obscured by exaggerated respect for the reputation of a popular writer.

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TABLE OF ABBREVIATIONS.

Dáyabh.	.	Dáyabhaga, of Jimuta Vahana, translated by H. T. Colebrooke.
Dáyakr.	.	Dáyakramasangraha, of Srikrishna Tarkalankara, translated by P. M. Wynch.
Dáyat.	.	Dáyatattwa, of Raghunandana, translated by Golap Chandra Sarkar. Calcutta, 1874.
Macn. Prin. .	.	Macnaghten's "Principles and Precedents of Hindû Law."
Mitáksh.	.	Mitákshara, of Vijnyaneswara, translated by H. T. Colebrooke.
Moo. I. A. C.	.	Moore's Indian Appeal Cases, London.
S. D. A., Calc.	.	"Reports of Cases determined in the Court of Sudder Dewanny Adawlut," Calcutta.
Smr. Chand.	.	Smriti Chandrika, of Devanna Bhut (or Devanda Bhatta), translated by T. Kristnasawmy Iyer. Madras, 1867.
Viv. Chint.	.	Viváda Chintamani, of Vachaspati Misra, translated by Prossonno Coomar Tagore. 2nd Edition. Madras, 1865.
Vyav. Darp.	.	Vyavastha Darpana, by Shamachurn Sircar. 2nd Edition. Calcutta, 1867.

Vyav. May. . Vyavahara Mayukha, of Nilakantha, translated by Harry Borradaile.
W. R., Calc. . Calcutta "Weekly Reporter." Calcutta.

N.B.—For the convenience of the reader, we give the references, as far as possible, to Editions that are easily procurable. As regards the Dáyabhaga, Dáyakramasangraha, Mitákshara, and Vyavahara Mayukha, we take the numbers of the pages from "Hindú Law Books," a collection of reprinted translations, published by Mr. Whitley Stokes, at Madras, in 1865. In referring to Macn. Prin., we give the pages in Wilson's reprint, entitled "Principles of Hindu and Mohammadan Law, 6th Edition," published in London in 1871, except when we have occasion to refer to the "Precedents," which were not reprinted by Prof. Wilson. In such cases the reference is given to the copy of Macn. Princ., in 2 vols. (Calcutta, 1829), in the Library of Lincoln's Inn.

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CHAPTER I.

OBJECT OF THE WORK, AND SOURCES OF INFORMATION.

ALTHOUGH the Hindû law claims to be derived entirely from sacred texts, and might therefore be expected to be homogeneous and immutable, yet, as a matter of fact, it has gone through considerable fluctuations in the course of ages, and has come to be divided into no less than five distinct Schools or Systems. Three of these, the Bengal (or Gauriya), the Benares, and the Mithila, flourish in the north ; while two, the Maharashtra and Dravida, are accepted in the south. The Bengal School includes Calcutta, and the greater part of the north-east of India. The Benares School pertains chiefly to what are now called the "North-West Provinces," but also extends to a portion of the north-eastern seaboard. The Mithila commands a smaller district in Northern Behar, on

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the confines of Nepaul. The Maharashtra (or Mahratta) is confined to the north-western portion of the peninsula, and includes Bombay; and the Dravida (sub-divided into the Dravida proper, Kamataka, and Andra or Madras, branches) ranges over the greater part of the actual peninsula, including Madras.

In the following treatise we propose to begin with the Bengal School, and to use it as a type or basis on which our explanations of the other Schools will be founded. The reader will find his labour diminished by pursuing his investigations according to this plan, for the divergencies, sometimes of a startling character, would naturally tend to confuse his mind if he attempted to study all the Schools at once. Our principal authority for the Bengal School is the Dáyakramasangraha, and where no reference is given it may be assumed that we are following that treatise. The Dáyabhaga has also been consulted, and where it appears either to supplement or to contradict the Dáyakramasangraha we have always given the reference. In the present edition we add, for the first time, a summary of the doctrines of the Dáyatattwa, to which we had not access when our first edition appeared. For the Benares School we have followed the Mitákshara. We had not access, previous to the appearance of our first edition, to native treatises on the other Schools, and we were obliged to follow English writers, except so far as the Mitákshara (nominally accepted in all Schools but that of Bengal) was found to serve as a guide. On the present occasion we have been more fortunate, having obtained access to the Viváda Chintamáni (Mithila

School), the Vyavahára Mayukha (Maharashtra School), and the Smriti Chandrika (Dravida School, Madras branch); and we have thus been able considerably to enlarge the portions of the work treating of those Schools. From these preliminary details the reader will understand what is our authority for each statement of law, and we have not thought it necessary to refer, in every case, to the particular passages on which we rely.

It may be as well to mention that all the native works above enumerated, with the exception of the Dáyakramasangraha, have the prestige of some antiquity to back them. The Dáyakramasangraha is a comparatively modern book, composed no earlier than the last century; but it is remarkable as being the most clear and systematic of the native treatises which have been translated into English, and it seems entitled to the position which we have accorded to it by the general recognition which its doctrines have received.

The reader will do well to remember that the Hindû law was not originally divided into schools, but was treated by the old writers as one system, having sway wherever the Hindû religion prevailed. Thus we find that writers who are now looked upon as the oracles of different schools cited one another's works in old times, sometimes with approval, and sometimes in order to contest the views expressed in them. But a doctrine was generally approved or disapproved, not as that of a rival school, but as that of the particular author who was quoted; and it is abundantly evident that the idea of separate schools

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was not one of deliberate intention, but grew up, spontaneously, side by side with the reality of divergent doctrine and practice. It follows from these considerations that we may sometimes make use of the works of one school to assist us in interpreting or supplementing those of another. In this, however, the very greatest caution must be observed, for it can only be done with safety when the context makes it quite clear that the doctrines of the works compared are not opposed to one another. Even the author of the *Mitákshara*, nominally an authority in four schools out of the five, differs from each other writer whom we have consulted on some points, and can only serve as a guide in any other school than his own when it is quite clear that such other school has not wedded itself to a different doctrine.

It has been our aim, in this treatise, to give a faithful reproduction of the doctrines of certain specified Hindû writers, so that the reader, in consulting it, may feel that he dispenses with the necessity of laboriously seeking the order of inheritance in their more voluminous works. Entire success in such an effort is perhaps scarcely possible, but we have endeavoured to approximate to it by weeding out alike the quotations of more ancient sages and the glosses of modern commentators, and recording little or nothing but the direct statements of the text-writers themselves. It is with some gratification that, having made this our rule, independently, from the first, we have since found that similar canons for ascertaining the true doctrines of Hindû law have more than once been enunciated by the

very highest authority. The Judicial Committee of the Privy Council, in the case of "Collector of Madura v. Moottoo Ramalinga Sathupathy" (12 Moore's I. A. C., 397), said : "The duty, therefore, of an European Judge who is under the obligation to administer Hindû law, is not so much to inquire whether a disputed doctrine is fairly deducible from the earliest authorities, as to ascertain whether it has been received by the particular school which forms the district with which he has to deal, and has there been sanctioned by usage." And, in "Thakoorain Sahiba v. Mohun Lall" (11 Moore's I. A. C., 386) : "To alter the law of succession as established by a uniform course of decisions, or even by the *dicta* of received treatises, by some novel interpretations of the vague and often conflicting texts of the Hindû commentators, would be most dangerous, inasmuch as it would unsettle existing titles." Confirmed in our own views by these remarkable passages, we have the less hesitation in urging our readers, when studying the maxims of the Hindû writers, to be guided by the same principles of selection that we have laid down for ourselves in the composition of this work.

CHAPTER II.

EXPLANATION OF THE CHART, PARTS I. AND II.

It must be understood that the Chart, Parts I. and II., refers only to the succession to a deceased male. It will be seen hereafter that a woman's property, if acquired by succession (as in the case of a daughter who is heir to her father), usually descends after her death to the next heir of the person from whom she inherited it;¹ and that the descent of a woman's stridhan, or separate property, is governed by special rules of its own.² It must also be borne in mind that the property of a hermit, an ascetic, or a professed student does not descend to his relations,³ and is not therefore a proper subject to be dealt with in this treatise, which purports to deal only with family inheritance.

The Chart, Part I., contains wife, mother, and paternal relations within the degree of sapinda; Part II., maternal relations presenting oblations which the deceased was bound to offer. The word sapinda means, primarily, a person related to the deceased in such a degree as to partake with him of an undivided or double offering of the pinda or funeral cake; or, as it is elsewhere expressed, of two

¹ Dáyabh. 322, 329.

² *Inf.* Chap. IV.

³ *V.* Dáyabh. 352; Mitáksh. 450, &c.

oblations at solemn obsequies, one which it was incumbent on the ancestor to present, and the other which is to be tasted by his manes. This advantage extends to three generations above the deceased, and three below him, in the direct male line. The expression "undivided offering" may be thus explained: Every man is bound during his lifetime to present an offering of the funeral cake to his three immediate male ancestors; and it is believed that on his death he partakes, by a kind of reflection, of the benefit of the offering that he himself has made. But this is not all. He also partakes of the offerings which they have made to the three ancestors next above, and which are, as it were, transmitted to him by the first three. Thus, as regards the first three, he partakes of a double offering, an offering both by reflection and by transmission, whereas it is clear that between him and the second three (since he has made no offering to them), there is only a single offering, an offering by transmission, but none by reflection.¹ From this explanation it will be seen that, if any individual be taken as the Propositus, the persons who are sapindas with him are, in the descending pedigree, the son, son's son, and son's son's son, and, in the ascending pedigree, the father, father's father, and father's father's father.

It is evident from some passages in the Dáyabhaga that the word sapinda is sometimes used in a wider

¹ The author believes the above to be a correct statement of the doctrine of sapindaship according to the Bengal School, but the subject is not very clearly treated by the Hindú writers.

: Dáyabh. 227, 313, 314.

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sense, so as to include certain maternal relations also;¹ but as the more limited sense is generally adopted, we have thought it best to describe the above-mentioned direct male descendants and ascendants, and those who inherit through them, in Part I., as "paternal relations within the degree of sapinda," while the relations in Part II. are described as "maternal relations presenting oblations which the deceased was bound to offer;" a designation which will be explained when we come to treat of that part of the Chart.² In consulting the Chart, the reader must understand that the numbers indicate the order of succession. Thus, 1 will succeed in preference to 2, 2 in preference to 3, &c.³ If there are several

¹. Dáyabh. 313. "On failure of sapindas, or near kindred, sakulyas, or remote kinsmen, are heirs." We shall see, *infra*, that the sakulyas are persons who inherit after the relations in the Chart, Part II.

² *V. inf.* 22.

³ This order is said to depend, generally, on the greater or smaller amount of funeral benefits. Thus, the daughter's son precedes the father, because he makes offerings to the Propositus, and to his father and father's father; while the father makes only two offerings within the degree of sapindaship, viz. to the father's father, and father's father's father of the Propositus (Dáyabh. 330). But, on the other hand, the brother's son precedes the father's brother, for though they make the same number of offerings, viz., the former to the father and father's father of the Propositus, and the latter to his father's father, and father's father's father, the former is the "preferable claimant," because the owner's own father is "principally considered" (Dáyabh. 344). And even the brother's son's son is preferred to the father's brother for a similar reason, though he actually makes a smaller number of offerings to the sapindas of the Propositus (Dáyabh. 345). Again, the father, who makes only

relations in the same degree (*e.g.*, several sons) it may be assumed that they take the property equally ~~among~~ them, except in certain cases of descent *per stirpes* which are particularized in their respective places. For ordinary purposes, it may be assumed that there is no distinction between movable and immovable, or between ancestral and acquired, property. The relations to whom no numbers (*e.g.* sister) are assigned are persons who do not inherit, and who are only inserted as part of the machinery of the Chart.

It will be observed that, in Part I., a distinction is drawn, in some instances, between the whole blood and the half blood, and between associated (in other words, reunited after partition) and unassociated. For the sake of simplicity, we have omitted to specify these distinctions except in the case of certain very near relations. But it seems clear that the former distinction extends to all males related through males only, for Srikrishna expressly extends it to father's and father's father's brothers and their sons and sons' sons.¹ And the latter distinction would seem to apply to all relations capable of being reunited; the Dáyakramasangraha making use of the expression "brothers and others connected by parity of relationship,"² and the Dáyabhaga using the

two offerings within the degree of sapindaship, comes before the brother, who makes three (Dáyabh. 330, 333). It is clear, from these instances, that it would be unsafe to argue in favour of the priority of any given relation without the sanction of custom or precept, merely from his being known to enjoy a superiority of funeral benefits.

¹ V. Srikrishna's enumeration of heirs, Dáyabh.

² Dáyakr. 507.

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general words "or sons of such brothers, or uncles, or the like."¹ It is beyond the scope of this work to discuss the question, what relations are capable of being reunited, a subject which has given rise to some difference of opinion among the native writers.

The following remarks are necessary with respect to particular relations. The numbers refer to the Chart, and those which we pass over without observation may be assumed to require no explanatory statement.

1-3. Although a son or son's son, if living at the death of the Propositus, excludes his own descendants, because a person is "incompetent to the celebration of solemn obsequies" while a living ancestor intervenes, such a relation does not exclude his own nephew or grand-nephew, for the same cause of exclusion does not exist. Consequently, if there be a son, a son's son whose father is dead, and a son's son's son whose father and father's father are dead, these descendants take the property among them. Their shares of the property are equal, because, under the supposed circumstances, they are held to confer equal benefits on the Propositus; in other words, "they equally present oblations to the deceased."²

Sons' sons by different fathers take *per stirpes* and not *per capita*; and, similarly, if there be one son, and several sons of a deceased son, the son's sons will take amongst them only one son's share.³ There

¹ Dáyabh. 228, 350; Dáyakr. 474.

² Dáyabh. 228, 229, where the reason for inheritance *per*

can be little doubt that the same principle applies to sons' sons' sons also.¹

An adopted son, if there are no actual sons, takes the place of an actual son, so as to succeed to the whole property of the person who has adopted him. But if there be an actual son as well as an adopted son, the former takes two shares and the latter one share; or, in other words, the adopted son takes a third of the entire property.²

The son of a sudra by a female slave or other unmarried sudra woman will inherit his father's property if there be no son by a wedded wife and no daughter's son. If there be sons by a wedded wife, he will take half a son's share; or, with his father's consent, a whole son's share. If there be daughters' sons and no sons, he will share equally with them.³

stirpes is given as follows: "Their interest in the wealth is founded on their relation by birth to their own father, and they have a right to just so much as he would have been entitled to."

¹ This is, however, we think, not actually stated in the Dáyabhaga or Dáyakramasangraha. Mr. Macnaghten purports to quote a case in favour of this doctrine (2 Macn. Princ. 10), but the passages from the Dáyabhaga and Mitákshara cited therein state this principle only as to sons' sons.

² Dáyabh. 299-301; Dáyakr. 516. It may be as well to mention that, in one passage, it is stated that "an adopted son shall be entitled to the third part of the share of a true son." But, later in the same page, the words "a third part" are used, apparently, in relation to the words "the whole estate of a father." The Dáyakramasangraha distinctly gives an adopted son a third part of the whole estate; and it may be conjectured that the author of the Dáyabhaga, in the first passage above cited, meant to indicate a third part of the share of an actual son *standing alone*; i.e., a third part of the whole property.

³ Dáyabh. 298; Dáyakr. 513. But what if there be

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According to the writers of the Bengal School, sons become entitled, not by birth, but by the death of their father and their own survival ; consequently they have not, during their father's lifetime, any right of ownership or claim to partition. After the father's death, however, they may make partition whenever they think proper, provided the mother, if living, consent ; while, if there is only one son, the whole will vest in him (subject to his mother's right) without partition. It follows that one of several sons, after the death of the Propositus, has a full and free power of disposition over his share —undivided or divided, as the case may be—of the property. There may be some reasonable doubt whether the author of the *Dáyabhaga* has expressed this position with perfect clearness ; but the doctrine is distinctly laid down by the author of the *Dáyakramasangraha*, who not only states, in common with the author of the *Dáyabhaga*, that one of several co-parceners has an ownership—not arising from partition, but irrespective of it—to the extent of his own unascertained share, though not pervading the whole property, but also thence infers that any person becoming entitled in co-parcenary, as, for instance, one

ters? The *Dáyabhaga* and *Dáyakramasangraha* do not take notice of this contingency. Yet it can scarcely be supposed that a person would be totally excluded by daughters, though admitted to share with sons ; or, on the other hand, that he could totally exclude daughters, while daughters' sons were allowed to share with him. In the absence of any directions by the *Dáyabhaga*, the *Mitákshara* would probably be followed.
F. inf. 38, Chap. V.

of several sons after the father's death, has a free power of disposition over his own share as well before as after partition.¹

In the above remarks we have not mentioned the subject of proportional division between sons of different classes, or that of the heritable rights of daughters appointed to raise up issue in default of sons, as both these branches of the law of inheritance are obsolete in the present, or Kali, age.²

The subsequent order of succession is ostensibly derived by the writers of the Bengal School, equally with those of the other schools, from a text of Yajnavalkya, which runs as follows :—

"The wife and the daughters, also both parents, brothers likewise and their sons, gotrajas, bandhus, a pupil and a fellow-student ; on failure of the first among these, the next in order is indeed heir to the estate of one, who departed for heaven leaving no male issue. This rule extends to all persons and classes."³ Having pointed this out, we proceed to the next person in the order of the Chart.

¹ *V.* Dáyabh. 183-191, 205, 207, 226, 309, &c.; Dáyakr. 519-521. The reader will do well to bear this doctrine in mind, as it forms a leading and distinguishing feature of the Bengal School.

² *V.* Dáyakr. 475; Smr. Chand. 103, &c. As to the former subject, the Dáyakramasangraha states that marriage with a woman of unequal class is prohibited during the Kali age ; and it follows that a man's children cannot be of different classes, since they could only be so by one or more of the mothers being of different class from the father.

³ Dáyabh. 304. We cite this text, relied upon (with slight variations) by all the native writers to whom we have access, as the very basis and fountain head of their respective systems,

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4. Although the wife, in the absence of male issue down to the son's son's son, is held, technically, to take the whole property, and not merely a right of maintenance out of it, yet she has only a limited and peculiar power over it. She may not, as a general rule, give it away or make waste¹ of it ; nor, unless unable otherwise to subsist, may she mortgage or sell it. She is allowed to enjoy it with moderation, "not by wearing delicate apparel, or similar luxuries," until her death ; to give, mortgage, or sell it for the sake of the deceased husband's funeral rites, to give presents to certain of his relations, and to ancient and unprotected persons, guests, and females of the family ; and, in the absence of such persons, or with their consent, to make gifts to the relations of her own father and mother. In the disposal of the property by gift or otherwise, as well as in her own actions, she is subject to the control of her husband's family ;

in order that the reader may observe for himself, as he passes on from school to school, the manner and degree in which the several sets of local teachers, all professing equal veneration for the same primary authority, have nevertheless diverged from it, and from one another, in various directions. The words "gotrajās" and "bandhus" have frequently been rendered by "gentiles" and "cognates," from a fancied resemblance to the classes of inheritors so called in Roman law. We prefer to use the original Sanscrit words, because they are not really identical with "gentiles" and "cognates," and therefore the substitution of those terms for them seems to us to be illogical and likely to mislead.

¹ By "waste" is meant expenditure not useful to the owner of the property (Dāyabh. 321; Dāyakr. 475). Those to whom she may give are enumerated at Dāyabh. 322.

or, if that family be extinct, or helpless, or contain no male person within the degree of sapinda, then to that of the relations of her own father. After her death, the property goes, not to the persons who would have been entitled¹ to her stridhan,² but to the persons who would have succeeded as heirs of her husband if she had died before him.³

5-7. The meaning of the expression "likely to have male issue" is not in itself very clear; but it is explained by the rule laid down that married daughters who are barren, and widowed daughters who have no sons, cannot succeed.⁴ The reason for the exclusion of such daughters is, that if a daughter has not male issue, she cannot benefit the deceased by means of a funeral oblation offered by her sons; and, being incompetent to make funeral offerings herself, she is thus unable to confer any funeral benefit whatever.⁴ A daughter cannot succeed unless she is virtuous and devoted to obedience. Property inherited by a daughter does not, at her decease,

¹ *F. inf.* Chap. IV.

² The rule as to the subsequent devolution of the property would seem to apply also to daughters, and to all other females taking property by inheritance (*Dáyabh.* 322, 330).

³ *Dáyabh.* 323, 325; *Dúyakr.* 476.

⁴ *Dáyabh.* 324. And, according to the *Dáyabhaga*, it was necessary that she should be "of an equal class" with her father, and (if married) "married to a man of like tribe." But, at the present day, marriage with a person of a different class (or tribe, for the words are used indifferently) is forbidden; and as children can only be of a different class from their parents by reason of the father having married a woman of a lower class, it follows that both these conditions are now superfluous (*Dúyakr.* 475).

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descend as stridhan,¹ but goes, as in the case of a widow, to those who would have succeeded the Propositus if she had died before him.

¹ (For the descent of stridhan, *v. inf.* Chap. IV.) Dāyabh. 322, 329, 330; Dāyakr. 476. It has, however, been stated by Mr. Macnaghten, that if a maiden daughter succeeds, and afterwards marries, and has a son, that son will succeed on her death in preference to the other qualified daughters, and this opinion has, we must venture to think, misled the High Court at Calcutta, in the case of Radha Kishen Manjhee *v.* Rajah Ram Mundul (6 W. R. Calc., 147). We quite agree with Shambuchurn Sircar in disapproving this view, which receives merely a shadowy support from the words "without bearing issue" (Dāyabh. 329), and "without having borne issue" (Dāyakr. 476). The words in the Dāyabh. are only a gloss by Srikrishna, so that any inference from the two passages must rest on his sole authority. The inference drawn as to the son's succession is clearly antagonistic to the opinion of the author of the Dāyabh., who, in the immediate context, states that the same rule which regulates succession on the death of a widow "is inferred, *à fortiori*, in the case of the daughter *and grandson*, whose pretensions were inferior to the wife." But it does not seem to us that even Srikrishna's words, if we were to disregard everything else, would warrant the conclusion arrived at by the High Court. In both passages, the expression used is "issue," not "male issue;" and if we infer negatively that a son, if any, would succeed, we are bound to draw the same inference as to a daughter, which would be a *reductio ad absurdum*, for we know that a daughter's daughter could not possibly succeed under such circumstances (*inf.* 17). It is reasonable to suppose that in these passages, which were written purposely to distinguish the incidents of a daughter's inherited property from those of her stridhan, Srikrishna, by the insertion of the words above mentioned, meant nothing more than what is actually stated, viz., that a husband does not, on his wife dying without issue, succeed to her property inherited before the marriage from her father, as he would to her stridhan. This statement, taken *per se*, is perfectly correct, and it is unnecessary to clothe it with

The right of daughters' descendants is confined entirely to their sons, since neither their daughters nor their more distant male descendants are entitled to offer funeral oblations to the Propositus.¹

a negative inference, entirely at variance with a rule laid down in the most distinct and positive manner. Those who have trusted Macnaghten implicitly in the matter will probably see reason, on reconsideration, to modify their confidence in him. That writer does not allude to the texts above mentioned, but founds his opinions solely on a case decided by the (late) Calcutta Sudder on the 19th April, 1820, on appeal from the Zillah Court of Rungpore, the reference given being S. D. A., Cale., "vol. ii. p. 26." The case in question, *Mussumaut Bijia Dibia v. Mussumaut Unnapoorah Dibia*, is, in fact, reported in vol. iii. (not vol. ii.) p. 26, but the original error has been allowed to remain in all the editions of Macn. Prince. If Professor Wilson or anybody else had taken the trouble to find this case out, he would at once have seen that Mr. Macnaghten was misled by the marginal note; the actual decision having nothing to do with the question under consideration, but depending solely on the validity of a certain deed of gift. It would be difficult, perhaps, in the whole range of legal literature, to find such another budget of blunders as this. Nor would it be easy to find a more remarkable instance of the fructifying power of error. A reporter makes a mistake in an obscure marginal note; after a lapse of years that mistake comes before the world as an opinion of Sir W. H. Macnaghten; another long interval, and it is transmuted into a ruling of the High Court; let us hope that, the origin of the error (as we deem it to be) having now been fully exposed, it will not be further developed into a final decision of the Privy Council!

¹ Dáyabh. 323. The text of Yajnavalkya (*sup.* 13) omits daughters' sons; and the Dáyabh. gets over the difficulty by stating that "the maiden daughter, married daughter, and daughter's son, are all signified by the term 'daughters' in the plural number," and disposes of the doctrine of those who would interpret the text literally as "mere childish prattle" (Dáyabh. 329). This is only one passage out of many, showing how

8, 9. The writers of the Bengal School place the father before the mother, relying on certain words in a text of Vishnu, "if there be none" (*i. e.*, no daughters) "it belongs to the father; if he be dead it appertains to the mother."¹ The author of the Dáyabhaga maintains, moreover, that the priority of the father may be inferred even from the text of Yajnavalkya (*sup.* 13), the word pitaraū (translated "both parents") being formed, in its inception, from pitri (father), while the succession of the mother is indicated only by the dual termination (au) subsequently grafted on it. As to the mother's postponing her right to the brother, *v. inf.* Nos. 10-12.

10-12. Among several brothers and half-brothers of the deceased, the whole blood takes precedence of the half-blood, and the associated or reunited are preferred to the unassociated or non-reunited; but when one brother possesses the advantage of the whole blood, but is unassociated, while another possesses the advantage of association, but is of the half-blood, they inherit together. Consequently the unassociated whole brother and the associated half-brother will be found to bear the same number in the Chart. It would seem, notwithstanding the above general rule, that if a man die before partition, leaving brothers and half-brothers, they will take the immovable property equally among them.² The Bengal School

dangerous the reader would find it to try to ascertain the existing law from old texts, no matter with what veneration, nominally, such texts are cited by the received authorities.

¹ *V. Dáyabh.* 304, where the text will be found in full.

² *Dáyabh.* 342. In works on Hindú law, whole brothers are

seems tacitly to accept a doctrine openly proclaimed in some of the other schools, that the brother may, by the consent of the mother, inherit before her.¹

13-15. In the case of brothers' and half-brothers' sons, the same distinctions respecting whole and half-blood and association are expressly laid down as in the case of brothers.² If a man die leaving brothers or half-brothers, and also sons of deceased brothers or half-brothers, the brothers' or half-brothers' sons will take nothing.³

16-18. The distinction of whole and half-blood is expressly laid down, with respect to brothers' sons' sons, in the Dáyakramasangraha.⁴ The distinction of associated and unassociated is not expressly mentioned with respect to these relations, either in the Dáyabhaga or in the Dáyakramasangraha; but we have already shown that it appears to extend to all relations capable of reunion.⁵

often called "uterine." This seems not unnatural in treatises by native authors, for, in their eyes, the re-marriage of widows being forbidden, the term "brothers by the same mother" (see Dáyabh. 319), and "whole brothers" are necessarily co-extensive. In Europe, however, this use of the word "uterine" is illogical, and we shall always, in these pages, use the single word "brother," or, for the sake of emphasis, the expression "brother of the whole blood."

¹ Dáyabh. 330; Dáyakr. 478.

² Dáyabh. 343, 344; Dáyakr. 480.

³ Dáyabh. 334.

⁴ Dáyakr. 480.

⁵ *V. sup.* p. 9. It may be observed that Srikrishna lays down the doctrine as to brothers' sons' sons distinctly in his enumeration at Dáyabh. 353. The words are, "Here, likewise, the distinction of the whole and half-blood, and that of united

19. The Dáyabhaga gives simply 'father's daughter's son,' which, of course, includes both sister's and half-sister's son. The Dáyakramasangraha quotes, without any expression of disapproval, a text which expressly gives the 'sister's son and half-sister's son "an equal right of inheritance,"' and we have therefore given them the same number in the Chart.¹

20. The Dáyabhaga omits brother's daughter's son, but the claim of this relation (exclusively in the Bengal School) is stated clearly in the Dáyakramasangraha,² and appears to be fully recognized.

21, 22. The Dáyabhaga does not mention father's father and father's mother at p. 345, where the reader might expect to find them enumerated, immediately after sister's son ; but from an earlier passage it is to be inferred from the text of Yajnavalkya cited above³ that they must come, by the analogy of the father and mother, immediately before the father's father's

parcenary and disjoined parcenary, must be understood." Samachurn Sircar erroneously cites this passage as coming from the Dáyakramasangraha (*v. Vyav. Darp. 209*).

¹ Dayakr. 481. A doubt has been raised on this point; but not, we are inclined to think, with much reason. It is stated in Colebrooke's "Digest," that "some lawyers" (not simply "lawyers," as erroneously cited by Shamachurn Sircar, Vyav. Darp. 225) "consider it the opinion of Jimuta Vahana that in the succession of sons of the father's daughters, and so forth, a distinction is taken between uterino" (*i.e.*, whole, *v. sup.* 18, 19, note) "and half-sisters." Such an opinion is not, we think, to be found in the Dáyabhaga; and Srikrishna expressly states, in his enumeration at Dáyabh. 353, that no such distinction is made.

² Dáyakr. 481.

³ *Sup.* 13.

offspring—that is (allowing for the insertion before them, on the authority of the Dáyakramasangraha, of the brother's daughter's son) in the places given in the Chart.¹

23–34. From among the descendants of the father's father and father's father's father, the Dáyabhaga omits father's brother's daughter's son, and father's father's brother's daughter's son (27 and 34). It will be remembered that the Dáyabhaga also omits the corresponding relation in the lower generation (*v. sup.* No. 20).² The father's father's father and father's father's mother (like the father's father and father's mother, *v. sup.* Nos. 21, 22) are not expressly mentioned in the Dáyabhaga, but, from the passage alluded to above,³ it may safely be inferred that the author of that work recognized the places assigned to them.

It may be as well to mention in this place that the Dáyabhaga appears to hold Nos. 19–34 (except those

¹ Dáyabh. 332; and the Dáyakramasangraha gives them these places in express words (Dáyakr. 481).

² In the place of father's father's brother's daughter's son, Mr. Macnaghten erroneously gives "great-grandfather's" (*i.e.*, father's father's father's) "brother's daughter's son" (Macn. Prin. 32). It is strange that the late Professor Wilson should have allowed this, and similar errors, to pass. Macnaghten's error has fructified to a remarkable extent. A recent writer concludes a very faulty list with "great-great-grandfather's" (*i.e.*, father's father's father's father's) "brother's daughter's son." Another writer finishes his enumeration with "paternal grand-uncle's" (*i.e.*, father's father's brother's) "daughter's son and his" (*quære*, whose?) "brother's daughter's son." Shambuchurn Sircar (Vyav. Darp. 297) gives No. 34 correctly; but, singularly enough, refers to Macnaghten's faulty passage as an authority for his own accurate statement.

³ Dáyabh. 332, *r. sup.* 20.

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it omits) to be the persons designated as gotrajās, and the maternal relations, Nos. 35, &c., to be those termed the bandhus, in Yajnavalkya's text.¹

35, &c. We now come to Part II. of the Chart; and it is first to be observed that the mother, though necessarily inserted in order to bring in the others, is not numbered here, her place in the order of inheritance being No. 9 in Part I.

It is next to be remarked that the inheritance ascends, in the maternal line, to the fourth generation from the Propositus, instead of ending with the third, as in the paternal line. The reason is this, that the deceased, standing in the relation of daughter's son to No. 35, was bound, just as if he had been a son of that relation, to make offerings to him and to his two immediate male ancestors.²

Thirdly, it will be seen that no female maternal ancestors are entitled to succeed. In Part I., on the other hand, it was seen that certain female paternal ancestors were admitted.

Fourthly, it will be observed that persons bearing the same relationship to the mother that the brother's daughter's son, father's brother's daughter's son, &c. (20, 27, 34) bear to the Propositus are omitted. This is not surprising; for the admission of brother's daughter's son, &c., as we have seen above,³ is of modern growth, and, even now, is only recognized in Bengal.

¹ Dāyabh. 345, 346, &c.

² V. Dāyabh. 330, 331, and *conf.* with doctrine of funeral offerings, as set forth Dāyabh. 227, 313.

³ *Sap.* 20.

Fifthly, the distinctions of whole and half-blood and association are not mentioned.¹

Allowing for these points of difference, and placing the Propositus in the position of a son of the mother's father—since, as a daughter's son, he has to make the same offerings as a son²—the reader will find that Part II., which is ascending and collateral, is constructed on the same principles as the ascending and collateral portions of Part I. This may be tested very simply by striking out the word “mother's” all through, when we shall find father, brother, &c., in precisely the same order (allowing for the differences mentioned above) as in Part I. Or, on the other hand, taking the relations in order (*omissis omittendis*) from Part I., and prefixing the word “mother's” to each, we shall obtain the relations in Part II. precisely in the order in which they appear in the Chart.³

The relations in Part II. are not fully enumerated in the Dāyabhaga, which gives, indeed, very little detailed information as to the maternal relations;

¹ The latter distinction cannot exist, as there is no joint estate between a man and his maternal relations, and therefore there can be no partition and no reunion. We are not aware of any authority as to the former distinction being recognized or not; e.g., we know of no passage stating whether mother's brother succeeds before mother's half-brother, or whether they inherit together.

² *V. sup. 22.*

³ These tests are interesting as showing that the principle on which this part of the descent is founded (differing as it does from the order in all other schools) is consistently and accurately carried out.

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but states that the bandhus succeed next, and defines the bandhus as "the maternal uncle and the rest," who "present three oblations to the maternal grandfather and other ancestors which the deceased was bound to offer."¹ .

The Dáyatattwa, which is also usually considered to be an authority of the Bengal School, gives a different order, in some respects, from that set forth in the Chart. The Dáyatattwa appears to be a hasty compilation, loosely thrown together; and it is not likely that its doctrines would prevail against those of the Dáyabhaga or Dáyakramasangraha, especially where those two works corroborate one another. Nevertheless, as the Dáyatattwa is often cited, it may be as well to indicate its principal points of divergence from both or either of the other authorities.

1-3. The principle of succession *per stirpes* is expressly extended to sons' sons' sons.² An adopted son with an actual son is entitled to "a third part," or "one-third share;" but it is not stated whether this means a third of the whole estate, or a third of the actual son's portion. The doctrine as to the son of a sudra by a female slave is very similar to that

¹ Dáyabh. 346. With respect to No. 39, Mr. Macnaghten makes a serious error in giving "mother's brother's daughter's son," instead of mother's sister's son (Macn. Prin. 32). As in the case of No. 34 (*v. sup.* 21, note), the mistake has been reproduced in subsequent "editions," and copied by subsequent writers. Shamachurn Sircar, as in the case above mentioned, gives the proper person, but again refers to Mr. Macnaghten's incorrect passage as an authority (Vyav. Darp. 298).

² Dáyat. 13.

mentioned above, but it is not extended to "another unmarried sudra woman."¹ As in the Dáyabh., sons are held not to take from birth; but, contrary to that authority, each co-parcener is held to have a right extending over the whole property;² and the unfettered right of a co-parcener over his own undivided share is therefore denied.³

4. The restrictions as to free disposition of property by a wife of the deceased are alluded to, but are not laid down in detail as in the Dáyabhaga, &c.⁴ These restrictions, whatever they may be, are not mentioned as extending to other females who may inherit.

5, 6. No. 6 should be simply "married daughter," as the words "with son or likely to have son" are not used, and barren and widowed daughters are not stated to be excluded.⁵ The rule as to a daughter being virtuous, &c., is not mentioned.

10-12. The succession of brother before mother, by the consent of the latter, is not mentioned.

16-18. Brothers' and half-brothers' sons' sons are omitted.

19-34. The gotrajas, as in the Dáyabh., are held to begin at No. 19, and to end at No. 33. The Dáyat. further agrees with the Dáyabh. in omitting brother's daughter's son and similar relations in the higher generations (20, 27, 34); but differs from it

¹ Dáyat. 18.

² Dáyat. 2, 3, 4, 7, 8, &c.

³ Dáyat. 7, 35, &c.

⁴ Dáyat. 63.

⁵ Dáyat. 66.

and from the Dáyakr. in omitting also the higher relations (25, 32) corresponding to brothers' sons' sons.¹

, &c. After the above come the bandhus, defined as beginning with the mother's father, who is followed by the mother's brother "and the like"—"since they present oblations to the maternal grandfather and the like, which the deceased was bound to offer." The Dáyatattwa gives no further details of Nos. 35–49. Allusion is made to a different description of bandhus, who find a place in the other schools; but the author of the Dáyatattwa merely enumerates these bandhus (the list being the same as in the Benares School, &c., with one trifling error, the transposition of mother's father's sister's son and mother's mother's sister's son), without stating in what place they are to come in.²

It will be seen hereafter that in some points (*e.g.*, the rejection of brothers' sons' sons, &c., the recognition of a property of undivided co-parceners pervading the whole estate, and the mention of a class of bandhus inconsistent with those recognized by other writers of the Bengal School) the Dáyatattwa seems to dissent from the opinions of the other writers of the school to which his work is usually assigned, and to approach more nearly to those of the Benares and other schools; and it is difficult to resist a suspicion, either that Raghunandana, from want of full knowledge of his subject, mixed up

¹ Dáyat. 74, 75.

² Dáyat. 77. The reader will find an enumeration of the bandhus, according to all schools except that of Bengal, *inf.* 43, 44.

the doctrines of different schools, or that later writers have manipulated his work, and handed it down to posterity in an altered form.

CHAPTER III.

SAKULYAS AND OTHER REMOTE HEIRS ACCORDING TO THE BENGAL SCHOOL.

WHATEVER may be the difficulties as to the precise definition of the classes hitherto mentioned, there is no doubt of the fact that both these classes are called "near kindred," and that those who succeed next are the sakulyas, or "remote kindred."¹ These consist (primarily at least) of the next three persons in direct male descent below the person numbered 3 in Part I., and the next three persons in direct male ascent above 28.² The sakulyas do not share an undivided oblation with the deceased, but the deceased derives an inferior benefit from their offerings, which is called a "divided oblation."³ This is easily understood after what has been said above as to undivided offerings. Supposing the ancestors to be A. B. C.

¹ Dáyabh. 313.

² Dayabh. 314; but at 347, 349, they are said to be the descendants of such ancestors.

³ Dáyabh. 313, 349, sometimes called the "remainder," or "residue" of the oblations (Dáyabh. 349; Dáyakr. 484).

D. E. F. (ascending in that order); then we have seen that the Propositus has in common with C., for instance, two offerings, one which he himself presented to C., and one which C. has presented to those above.¹ But the Propositus could not present an oblation to D., who is beyond the third generation; so that he only shares with him the benefit of the offering made by C.

As among themselves, the sakulyas appear to take in the following order; first, son's son's son's son, then that person's son, then his son's son; afterwards, in default of these, father's father's father's father, then that person's father, then his father's father; or, according to some passages in the Dáyabh., the descendants of these progenitors.² The practical effect is, no doubt, that such remote ancestors being seldom alive, their descendants through males, as a matter of fact, succeed in default of nearer relations.

On failure of the sakulyas, the samánodakas, or kinsmen allied by common libations of water, succeed.³

We must here remark, however, that there is much confusion about the sakulyas and samánodakas; the former being sometimes stated to include, or to be identical with, the latter; though, almost in the same breath, the latter are said to succeed on failure of the former. It is impossible to say exactly where

¹ *Sap.* 6, 7.

² Dáyabh. 347, 349; Dáyakr. 484.

³ It will be remembered that the oblations previously alluded to are offerings, not of water, but of solid food called the "funeral cake."

the sakulyas end and the samánodakas begin.¹ Nor is there any passage, as far as we have been able to ascertain, in the works of the Bengal School, to show how far the samánodakas extend.²

On failure of all the relations above mentioned, the property will go, in order, to the following :—

Spiritual preceptor.³

Pupil.

Fellow-student of the Vedas.

Persons bearing the same family name, being inhabitants of the same village.

Persons being inhabitants of the same village, and descended from the same patriarch.

Brahmans inhabiting the same village, learned in the three Vedas, &c.

Then, in the case of a Brahman—

A Brahman residing in another village.

And, in the case of any other person—

The King.⁴

¹ Dáyabh. 349; Dáyakr. 484. Probably the true explanation of the ambiguity is that “sakulya” has really two popular acceptations, one limited to the first three generations after the sapindas, the other including the more distant descendants and ancestors.

² Mr. Macnaghten (Macn. Prin. 32) states that the property goes “in the ascending and descending line, as far as the fourteenth degree,” but does not give any authority. It is not unreasonable to conjecture that, in this passage, he is confusing the Bengal doctrines with those of other schools.

³ Defined as “He who affords religious instruction to his pupil after investing him with the bráhmanical thread” (Dáyakr. 484).

⁴ Dáyakr. 484, 485. The Dáyabh. (349) gives a slightly different list. It may be as well to mention, once for all, that

The Dáyatattwa does not mention any devolution beyond the sakulyas.¹

CHAPTER IV.

EXPLANATION OF THE CHART, PART III.

STRIDHAN is the separate property of a woman. The course of its descent depends on the manner in which it was acquired. The devolution of Yautaka, or Stridhan given at the nuptials, in the Bengal School, is shown in the Chart, Part III., which, however, must be studied in connection with the following remarks :—

1. If there be several unmarried daughters, some affianced and others not affianced, the latter take precedence of the former.²

4-10. In the Dáyabhaga it is not altogether easy to ascertain the order of these relations. It seems, indeed, that the Dáyabhaga puts the son next to the daughters;³ but for the rest of the order we have to rely on the Dáyakramasangraha.

11-14. If the marriage was according to one of the English Courts refuse to recognize any general claim on behalf of Bráhmans to interfere with the right of the Crown by escheat. See "Collector of Masulipatam v. Cavalry Vencata Narainuapah," 8 Moore's I. A. C., 500.

¹ *T. Dáyat.* 76.

² *Dáyabh.* 249; *Dáyakr.* 492.

³ *Dáyabh.* 250.

the first five forms, the succession, according to the Dáyakramasangraha, will be as in the Chart; if according to one of the last three, the order will be, mother, father, brother, husband.¹ The Dáyabhaga merely states that the stridhan of a woman dying "without issue" goes, in the former case, to the husband; in the latter, to the mother, and then to the father.²

15-20. These persons are brought into the order of inheritance by means of a text declaring that the mother's sister, the mother's brother's wife, the father's brother's wife, the father's sister, the wife's mother, and the wife of the elder brother, to be "equal to mothers."³ From this it is held to follow that the correlative male relations succeed to the stridhan of such persons; but the order is altered by a special precept, and they come in, actually, in the order shown in the Chart.⁴ It may be as well to observe that the Dáyabhaga makes no distinction between elder and younger brothers' sons, and that the Dáyakramasangraha states expressly that they inherit together. They therefore bear the same number in the Chart.⁵

¹ The first five forms are: Brhma, Daiva, Arsha, Gandharva, and Prajapatya; the last three, Paisacha, Rakshasa, and Asura (Dáyabh. 250; Dáyakr. 494, 495).

² Dáyabh. 250-252.

³ Dáyakr. 498. In the Dáyabh. (257), instead of "mother's brother's wife," and "father's brother's wife," we find simply "the maternal uncle." This is clearly an error, as may be seen from Dáyabh. 259, where the correlative relations are given in order.

⁴ Dáyabh. 259; Dáyakr. 499.

⁵ We have thought it best to allude to this, as Mr. Mac-

21, 22. The Dáyabhaga gives "the father-in-law, the husband's eldest brother, and the rest, according to their nearness of kin," without any further explanation.

The further devolution of this kind of stridhan will be found *inf.* 33. Stridhan not given at the nuptials may be divided into two kinds, property given by the father,¹ and property not given by the father.

The devolution of property given by the father, but not given at the nuptials, is precisely the same as that of property given at the nuptials.²

Property not given by the father, and not given at the nuptials, descends as that given at the nuptials, with the following exceptions:—

1-10. Unmarried daughter (1) and son (4) inherit together, and in default of the one, the whole goes to the other. Then comes married daughter with son, &c. (2). After these comes the son's son (6), and then the daughter's son (5). The Dáyakramasangraha then gives the son's son's son, and afterwards the son, &c., of contemporary wife

naghten, evidently in error, places the younger brother's son first, without giving any authority. *V.* Macn. Prin. 43.

¹ Property given by the father *at* the nuptials has, of course, been included in the general description "given at the nuptials." That its descent is identical with that of other property given at the nuptials is clearly stated at Dáyakr. 497.

² Dáyakr. 497. Mr. Macnaghten gives a rather different order (Macn. Prin. 43), copied, apparently, with one slight error, from Srikrishna's enumeration, Dáyabh. 260. We have preferred to adhere to the order laid down by Srikrishna in his own work.

EXPLANATION OF THE CHART, PART III.

(7, 8, 9, 10), in order, and then barren or widowed daughter (3).

11, &c. The remaining devolution is the same as that of Stridhan given at the nuptials.¹

The Dáyabhaga gives a similar order to the last above for the descent of woman's property *generally*, as distinguished from property given at the nuptials, with these exceptions, that the son's son's son, and the son, &c., of contemporary wife, are not mentioned, and that the devolution after barren and widowed daughters is not given.²

As to all kinds of Stridhan, the husband's elder brother appears to be considered the last sapinda.³ After the sapindas, the following persons succeed in order :—

Sakulyas.

Samánodákas.

Persons descended from the same Patriarch in the male line.

Then, in the case of a brahmani woman :—

Brahmans inhabiting the same village, and exceedingly learned in the Vedas.

In the case of all other women :—

The King.

It may be as well to mention that, when property

¹ Dáyakr. 497.

² Dáyabh. 243, &c.

³ Dáyakr. 499. But the Dáyabhaga, it will be remembered, gives "husband's eldest brother *and the rest*;" it seems, therefore, possible that the sapindas do not end here, and that there may be other relations between No. 22 and the sakulyas. If so, we have no means of pointing them out; nor have we any data for properly ascertaining the sakulyas, &c., in the case of woman's separate property.

has once descended as Stridhan, it is not considered to be Stridhan in the hands of the inheritor. If, therefore, it has descended upon a son or any other male relation, there is no reason to doubt that it will be inherited, after his death, by the same persons who will inherit his ordinary property. If, on the other hand, it has descended upon a female, it goes, after her decease, to the persons who would have inherited it if she had died before the *Proposita*.¹

The particular kind of property called a woman's "fee" or "perquisite" goes first to the brother of the whole blood, then to the mother, and then to the father.²

Property given by a bridegroom to the woman whom he is about to marry reverts to him in case of death or marriage of the lady, and does not descend as Stridhan.³

The Stridhan of an unmarried woman goes first to the brother of the whole blood, then to the mother, and then to the father.⁴

¹ *V.* Dáyakr. 493, where this principle is illustrated by the case of an unmarried woman who succeeds to her mother's Stridhan, and afterwards marries and proves to be barren. The property in such case goes, on her death, to the other daughters; and the husband, who in most cases (*sup.* 30, 31) succeeds to the Stridhan of a childless woman, has no claim to it. (N.B.—The words "or on the death of a widow who has not given birth to a son" in this passage may be disregarded as unmeaning and corrupt, for a woman who dies a widow cannot very well leave a husband surviving her!)

² Dáyabh. 256; Dáyakr. 494. But it is left a little doubtful whether the father or the mother comes first.

³ Dáyakr. 487.

⁴ Dáyabh. 253; Dáyakr. 487. Mr. Macnaghten places the father

The Dáyatattwa gives a devolution of Stridhan differing in some respects from that above described.

First, as to Stridhan given at the nuptials :—

1-3. After unmarried daughters (among whom the unbetrothed precede the betrothed) come married daughters, without distinction.

7. Son's son's son is omitted.

10. Contemporary wife's son's son's son is omitted.

11-14. When the marriage is according to one of the first five forms, the property is simply stated to go to the husband ; when according to one of the last three, to the mother, and then to the father ; the brother being entirely omitted.

15-20. The doctrine as to persons "similar to mothers" ¹ is recognized, with the same result as in the Dáyabhaga, &c.²

before the mother—a rather singular error, for the order given above is laid down most distinctly. Mr. Macnaghten adds that, on failure of the relations above mentioned, the property goes to "her paternal kinsmen in due order" (Macn. Prin. 41, 42); a rather startling allegation, for which he gives no authority. Nor does he attempt to explain the words "in due order," which are quite unmeaning by themselves, as the usual order of descent of Stridhan does not include any paternal relations at all.

¹ *F. sup.* 31.

² The Chapter on Stridhan in the Dáyatattwa is rather confused, and some persons seem, at first sight, to be omitted, whom we might reasonably expect to find. Several of these, however, are shown in subsequent passages to be really included in the order; *v. especially pp. 56, 57, "Both sons . . . deceased proprietor;"* and, as to husband's elder brother, see allusions at p. 57 and p. 60, which seem to show that his right is admitted.

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Stridhan generally, as distinguished from Stridhan given at the nuptials :—

1-7. First, unmarried daughter (1) and son (4) inherit together; then married daughter "with son," &c. (2); then son's son (6); then daughter's son (5); then son's son's son (7); and then barren and widowed daughters (3).

8-10. Contemporary wife's son, &c., are omitted.

11, 12. Brother takes precedence of husband if the property was given by the parents.

No further devolution is given.

The subject of the "fee" or "perquisite," and that of reverter of the bridegroom's gifts, do not appear to be mentioned.

CHAPTER V.

VARIATIONS OF THE FIVE SCHOOLS.

As we have already mentioned, there are five schools of Hindû law, each of which differs more or less from every other school in its rules. The Bengal School has been dealt with in the preceding portion of this work.¹ We have now to explain some of the divergent characteristics of the Benares, Mithila, Maharashtra, and Dravida (Madras branch) Schools, so far as we have been able to ascertain them from the native treatises to which we have had access.

The reader must remember, once for all, that each school in turn professes to base its order of succession on the text of Yajnavalkya cited above,² and that several schools also quote the text of Vishnu that we have mentioned.³ We shall not, therefore, recur to these texts except when it appears that there is some special reason for doing so. We now proceed to make such explanatory remarks as appear necessary. The numbers which are passed over in silence appear to call for no remark; and whenever this occurs, it may be assumed that there is no variation from the order of the Chart.

BENARES SCHOOL.—1-3. The son's son's son is not mentioned in the Mitâkshara.⁴ An adopted son

¹ *V. sup.* Chaps. II. III. IV.

² *Sup.* 13.

³ *Sup.* 18.

⁴ The absence of all mention of the son's son's son in the Mitâkshara does not seem to have been observed by Mr.

"shares a fourth part" with an actual son; but it is not stated whether this means a fourth part of the whole estate or a fourth part of the share taken by the actual son.¹ The son of a sudra by a female slave is in the same position as the son of a sudra "by a female slave or, &c.," in the Bengal School, except that he takes the whole if there are no sons of a wedded wife, *no daughters*, and no daughters' sons.²

Sons are entitled by birth; not, as in the Bengal School, by the death of their father and their own

Macnaghten or by Shamachurn Sircar, who both give the son's son's son as inheriting, without further remark (Macn. Princ. 34; Vyav. Darp. 1039). It is noticed, however, by Tagore, in the "Table of Succession" given by him in the introduction to his translation of the Viváda Chintamáni. (*V. Viv. Chint. "Table of Succession," ix.*) But is the old doctrine now in force?

¹ Mitáksh. 420. The passage has been variously interpreted, and we are not able to give any satisfactory authority on the point. Mr. Macnaghten (Macn. Prin. 72, 73) states broadly that the adopted son takes a fourth of the whole property in the Benares School; but the Sarasvati Vilása (an authority of the Dravida School) explains the Mitákshara as meaning to indicate a fourth part of the share of the actual son, *i.e.*, a fifth part of the whole, and the Madras High Court adopted this view in the case of *Ayyava Muppana v. Niladatchi Ammal*, 1 M. H. C. R. 45. Whatever may prove to be the actual law, the matter cannot properly be dismissed in the off-hand way adopted by Mr. Macnaghten. Shamachurn Sircar, misled apparently by Macnaghten, assumes that a fourth part of the whole estate is the share of an adopted son in all schools except the Bengal. In short, he does not seem to be aware that any other interpretation has ever been suggested.

² And we have submitted above (*sup. 11, note*) that this would be the case in Bengal also, though the words "no daughters" are omitted (probably from inadvertence) in the Dáyabhaga and Dáyakramasangraha.

survival. It follows that they are, from the moment of birth, co-parceners with their father, and they cannot be deprived of their share of the property liable to partition, whether ancestral or acquired.¹ The rule applies to sons' sons also.² And it is held that each co-parcener has a property in the whole, and not only in his own part; so that any one co-parcener is debarred by the pervading right of the others from exercising an independent power of disposition over his undivided share.³ As nothing can come between a son (or son's son) when once born, and his right to succeed, his inheritance is described as "unobstructed;" while all other inheritance is called "obstructed," as the right thereto may at any time be destroyed by the birth of a son.⁴ Under certain circumstances, the sons may insist on partition of the ancestral property during their father's lifetime; and it is almost unnecessary to say that either sons or sons' sons may interfere to prevent their ancestor from alienating it.⁵

It results, as a corollary to the doctrine that an undivided co-parcener cannot alienate his share, that his share remains vested in the other co-parceners if he die before partition. The undivided family consists, primarily, of the actual owner for the time being, his sons, and his sons' sons, and it therefore follows that relations beyond this nucleus cannot succeed any person born within it unless such person has separated from the rest previous to his decease. In the words of the Mitákshara, the existence of a son,

¹ Mitáksh. 375 (but *quære* as to acquired; *v* Mitáksh.

² Mitáksh. 391. ³ Mitáksh. 376. ⁴ Mitáksh. 365. ⁵ Mitáksh. 393.

and the survival of the owner, are impediments to the succession of parents, uncles, brothers, and the rest.¹ As females can never be members of the limited circle above alluded to, it follows that the wife, mother, daughter, &c., can only succeed when the Propositus was a member of a divided family.²

The subsequent order of inheritance must be understood to take place subject to the above-mentioned "impediments."

4. The Mitákshara does not impose on a wife³ suc-

¹ Mitáksh. 365. And, in the same page, we find the words, "the same holds good in respect of their sons," i.e., the sons of the parents, uncles, &c.

² In our first edition we merely mentioned the fact that certain relations could only succeed when the Propositus was one of a divided family; but we have thought it best, in this edition, to explain the important general principle of which that circumstance is a particular result.

³ And it may be mentioned here that it does not impose these restrictions on other women. The reason may perhaps be, that as women can only succeed to divided property, there is not so strong a motive for limiting their powers as in the Bengal School, where the wife, &c., can succeed to an undivided share. It may be as well to point out that this is in perfect consistency with the doctrine of the Mitákshara which includes property inherited by a woman in the category of a woman's Stridhan, or separate property (c. *inf.* 45). We feel bound to state the doctrines of the Mitákshara as we find them; but it will be as well to warn the reader that, notwithstanding the authority of that work, a very general impression seems to prevail that both the doctrines here alluded to are at variance with existing law. Prosonno Coomar Tagore, in the "Table of Succession" prefixed to his translation of the Viváda Chintamáni, which purports to be founded on the Mitákshara (among other works), states that "A widow enjoys her husband's property for life, but cannot sell or make a gift of it at her pleasure;"

ceeding to property the multitudinous restrictions which exist in the Bengal School. The only condition to her succeeding to the complete ownership of the property appears to be that she must be chaste.¹

6. This should be simply "married daughter;" as "daughter with son, &c.," is not specified, nor are widows, &c., included. A married daughter, unprovided, takes precedence of a married daughter enriched; the word "unprovided" is elsewhere defined as "destitute of wealth or without issue."² The succession of daughters is not restricted to those who are "virtuous, &c."

8, 9. The mother comes before the father. The author of the *Mitákshara* does not notice Vishnu's text (*sup.* 18). Referring to *Yajnavalkya*'s text

and, with regard to *Stridhan*, he first includes in it property inherited by a woman, and then states that the *Smritisara* contradicts that doctrine. It may be that, as, in the Bengal School, the *Dáyabhaga* frequently requires to be read with the assistance of the *Dáyakramasangraha*, so, in the Benares School, the *Mitákshara* may on these and other points be corrected by more recent works of authority. We regret that it is not in our power to throw any further light on the subject from native writers, as the *Mitákshara* is the only work of the Benares School to which we have access. It will be found, however, we believe, that the British Courts, including the Judicial Committee, have adopted, in the main, the views at which we have hinted in this note.

¹ *Mitáksh.* 432, 436, 439, &c. In the Bengal School chastity seems to be rather a precept than a condition; but the *Mitákshara* appears to make it an essential element in the right to succeed.

² *Mitáksh.* 384, 440, 461. It will be found, *inf.* 53, 55, 59, &c., that this word is differently interpreted in some of the other schools.

(*sup.* 13), he argues that, as the word pitaraū might be more fully expressed by the "regular compound" matapitaraū, of which the first part is formed from matri, mother, it may be concluded that the mother was intended to come before the father. An argument is also drawn from an alleged greater propinquity of the mother, by reason that she cannot, like the father, be the parent of half-brothers of the Propositus.

10-15. The distinction of associated and unassociated does not occur in the portion of the Mitākshara where it might be expected, namely, in that which treats of the order of succession of brothers, &c.; but it will be found in a later part of the book.¹ The distinction is not expressly extended to brothers' sons. Generally, if there be any brothers or half-brothers living, the sons of deceased brothers and half-brothers take nothing; but if the property was inherited from another brother who died before the Propositus (so that his property devolved on the Propositus and the remaining brothers together), and no partition has yet been made, the sons of the Propositus will take their father's share. The rule of the Dāyabhaga² that, under certain circumstances, whole and half-brothers take immovable property together, does not occur.

The gotrajas, according to the Mitākshara, commence after the brother's and half-brother's sons.

16-20. Brother's and half-brother's son's son,

¹ *V.* Mitāksh. 453.

² *V.* *sup.* 18.

sister's and half-sister's son, and brother's daughter's son, are omitted.

21, 22. Father's mother takes precedence of father's father.

25-27. Father's brother's son's son, father's sister's son, and father's brother's daughter's son are omitted.

28, 29. Father's father's mother takes precedence of father's father's father.

32-34. These, like the corresponding relations in the lower generation (Nos. 25-27), are omitted.

35, &c. The reader must completely dismiss from his mind, from this point, the order of the Bengal School. After No. 31 come in order, still included in the gotrajas, the males in each generation corresponding to those given above, up to the sixth generation (*i.e.*, seventh inclusive of the Propositus), who are all included in the sapindas. Then come the relations (it may be presumed, the similar relations) up to the twelfth generation (*i.e.*, fourteenth inclusive of the Propositus, and counting one also for the fresh point of departure after the sixth), who are held to be the samánodakas;¹ and here the gotrajas end.

After the gotrajas come the bandhus, who, according to the Mitákshara, are very different from any set of relations found in the Bengal School.² They are the following :—

Father's sister's son.

¹ But, "as some assume," the samánodakas extend "as far as the memory of birth and name extends," whence the designation gotraja, derived from gotra, a family name. *V. Mitáksh.* 447, 448.

² Alluded to, however, in the Dáyatattwa. *V. sup.* 26.

Mother's sister's son.

Mother's brother's son.

Father's father's sister's son.

Father's mother's sister's son.

Father's mother's brother's son.

Mother's father's sister's son.

Mother's mother's sister's son.

Mother's mother's brother's son.¹

Of the above, the first three are called the bandhus of the deceased himself, the next three those of his father, the last three those of his mother. The three sets succeed in order ; and it may be presumed that, as in other schools,² the members of each set take in the order in which they are enumerated.

It is almost unnecessary to point out that the first set of bandhus includes all the male first cousins of the deceased, other than his father's brother's son, who comes higher in the order of inheritance (No. 24) ; the next set all those of his father, other than his (the father's) father's brother's son, who also comes higher (No. 31) ; the last three all those of his mother, other than her father's brother's son, who is thus, without any explanation or apparent reason, left out of the inheritance altogether.³

¹ This list, which is the same for all schools except the Bengal, is correctly printed in the original edition (quarto) of Colebrooke's *Mitákshara*. The reprint in Mr. Stokes's "Hindú Law Books," contains several errors. The translator of the *Smriti Chandrika* has evidently had access only to the incorrect version, and he is at some pains to point out the errors, which he supposes to be those of the *Mitákshara* itself. *V. Smr. Chand.* 213.

² *V. Viv. Chint.* 298; *Vyav.* May. 90.

³ It will be remembered that he is No. 42 in the Bengal School.

It may be observed that this list of bandhus is quite inconsistent with the rules of the Bengal School, for it contains some relations who are not mentioned at all in that school, and it places others in very different positions from those which the Bengal School assigns to them.¹

After the bandhus come, in order :—

Preceptor.

Pupil.

Fellow-student.

Then, in the case of a brahman :—

Venerable priest.

Any brahman.²

But, in the case of a person of any other class :—

The King.

The following remarks apply to all kinds of Stridhan, as the Mitákshara does not distinguish between Stridhan given at the nuptials and Stridhan given at other times. According to the Mitákshara, Stridhan includes property acquired by inheritance,³ a doctrine which forms an important point of distinc-

¹ e.g., Father's mother's sister's son and father's mother's brother's son are not recognized in the Bengal School, while father's sister's son and father's father's sister's son are Nos. 26 and 33 in Chart, Part I.

² "Any brahman," however, is treated by the Mitákshara as synonymous with "such brahmans as have read the three Vedas, as are pure in body and mind, as have subdued their passions."

³ Mitáksh, 458, 465. But see remarks on this doctrine, and generally on property inherited by women in the Benares School, *sup.* 40, note.

tion between the Benares and the other schools. The numbers refer to the Chart, Part III.

1-3. After unmarried daughter comes daughter married and unendowed or unprovided, then daughter married and endowed or provided. "Unendowed" is defined in the Mitákshara as destitute of wealth ; "unprovided" as destitute of wealth or without issue.¹

After daughter comes daughter's daughter, who has no number in the Chart, as she has no place in the Bengal School. If there are several, they take *per stirpes* and not *per capita* ; but no daughter's daughter has a right of inheritance if there be any daughter living.

4, 5. Daughter's son takes precedence of son.

7-10. Son's son's son, and contemporary wife's son, son's son, and son's son's son, are omitted.

11, &c. The Mitákshara distinguishes between the first four and the last four forms² of marriage, instead of the first five and the last three. If the marriage was according to one of the first four, the Stridhan goes, in the absence of heirs down to son's son, to the husband (No. 11), and in his default, to his nearest kinsmen (sapindas) allied by funeral oblations; but if it was according to one of the last four, it goes to the mother and father (13, 14) in order ; and, in their default, to their next of kin. The expression "next of kin," however, is not defined. Beyond these the Mitákshara gives no enumeration of individuals.

¹ Mitáksh. 384, 440, 461. The Mitákshara does not draw the distinction laid down in the Bengal School between daughter with son, &c., and daughter widowed or barren.

² Including the Gandharva form among the latter. V. Mitáksh. 461.

A woman's "fee," or "gratuity," descends, apparently, to the mother, and in default of mother to the brother of the whole blood; but the passage is somewhat obscure.¹

The doctrine of reverter of the bridegroom's gifts is limited to the case of death of the bride without having been married.²

The Mitákhara appears to limit the rule as to descent of Stridhan of an unmarried woman to the case of a betrothed maiden who dies without having been actually married.³

MITHILA SCHOOL.—1-3. The doctrine of inheritance of sons' sons *per stirpes* and not *per capita* is not so distinctly set forth as in the Bengal School, but it may, we think, be inferred from a passage of the Viváda Chintamáni.⁴ An adopted son, with an actual son, according to one text cited, takes half as much as the actual son, or a third of the whole property; but according to another text, he is "sharer of a third part," and according to a third, he "shares a fourth part." The Viváda Chintamáni does not decide between these conflicting views.⁵ The rule as to a son of a sudra by a female slave, &c., seems to be the same as in the Bengal School, except that it is not mentioned what will happen if there be daughters' sons and no sons.⁶

¹ Mitáksh. 461.

² Mitáksh. 465.

³ Mitáksh. 465.

⁴ "The shares of grandsons shall be regulated according to those of their fathers." Viv. Chint. 236, and *v. also* 237.

⁵ Viv. Chint. 281, 286, 287.

⁶ Viv. Chint. 274, 275.

4. The wife, in order to succeed, must be chaste.² She may not give or sell the property ; but the limits of her power over it are not so exactly defined as in the Bengal School. These restrictions are not stated to extend to other females who may inherit. It is expressly stated that she can only take when the husband was one of a divided family.³

5, 6. The preference of unmarried to married daughters is not actually stated, but is given in a quotation, without disapproval. No. 6 should be "married daughter" simply, for the words "with son," &c., are not used, and barren and widowed daughters are not mentioned as being excluded.⁴

7. Daughter's son comes later, after mother and father (*inf.* Nos. 8, 9).

8, 9. Mother comes before father, a different version of the text of Vishnu being relied upon from that mentioned in the Bengal School, &c.⁵ After father comes daughter's son.⁶ By the consent of the

¹ Viv. Chint. 77, 78, 309, &c.; and (as to sons' sons' sons) 238, 239.

² Viv. Chint. 290, 299.

³ Viv. Chint. 290-292; and v. 261, &c.

⁴ Viv. Chint. 292, 293.

⁵ Viv. Chint. 288, 293, 299.

⁶ Viv. Chint. 294, 299. In our first edition we stated, on Macnaghten's authority (v. Macn. Prin. 24), that the daughter's son had no place in the Mithila School. It seems clear, how- .

mother and father, the brother, apparently, may inherit before them.¹

10-15. The brother, by consent, may inherit before the mother and father (*sup.* Nos. 8, 9). The rules as to whole and half-blood and association are not expressly extended to brothers' and half-brothers' sons; but, being very clearly laid down as to brothers and half-brothers, they would probably be held, by inference, to include the sons of those relations. The doctrine of the *Dáyabhaga* as to joint succession of whole and half-brothers in certain instances does not seem to occur.²

16, &c. After brothers' and half-brothers' sons there is no distinct enumeration of persons. The *Viváda Chintamáni* merely gives "the nearest kinsmen," then "the remotest kindred according to their order"; then "the nearest sakulya"; then "the remotest sakulya"; then "maternal uncles and others"; and, on failure of all these, the king, except in the case of a brahman, whose property goes to another

ever, from several passages in the *Viváda Chintamáni*, that he is recognized, though in a lower position than in the other schools. The translator of the *Viváda Chintamáni*, in his list of heirs, gives the daughter's son his *usual* place. This list, however, is of no authority as representing the doctrines of the *Viváda Chintamáni*, or, indeed, of any other particular work, as it is an attempt to amalgamate the doctrines of the *Mitákhshara*, *Viváda Chintamáni*, *Viváda Ratnakara*, and numerous other works. In the remarks which precede the list (paragraph XVI.), it is correctly stated that, according to the *Viváda Chintamáni*, the daughter's son succeeds "in default of the father."

¹ *Viv. Chint.* 293, 294.

² *Viv. Chint.* 3

then to the father; but it is added that "some say that it goes to him before her."

The rule as to reverter of a bridegroom's gifts does not appear to exist.¹

MAHARASHTRA SCHOOL.—1-3.• The doctrine of inheritance *per stirpes* and not *per capita* seems clearly to extend to sons' sons' sons. The Vyavahara Mayukha cites texts indicating that an adopted son, with an actual son, "shares a fourth part," by which the author of that work seems to understand a fourth part of the share taken by an actual son, or a fifth part of the whole property.² He admits, however, that another reading of one of the texts gives "a third part."³ The son of a sudra by a female slave is not expressly stated to take the whole, by right, under any circumstances; but it would appear that the doctrine is tacitly recognized, for it is stated, apparently by way of distinction, that a son of a man of one of the twice-born classes by a female slave does not take the whole in the absence of "sons or other heirs." And it is clearly held that the son of a sudra by a female slave takes a half share with legitimate sons, or a whole share by the father's choice. Nothing, however, is stated as to what he takes with daughters or daughters' sons.⁴

The doctrine of the right of sons, &c., by birth,

¹ Viv. Chint. 266-270.

² Vyav. May. 63, 66.

³ Vyav. May. 66.

⁴ Vyav. May. 55, 56. The "twice-born classes" are the Brahman (priestly), Kshatriya (kingly or soldier), and Vaisya (merchant), classes. Thus, the Sudra or slave class alone is excluded from the category of "twice-born classes."

with its corollary, that of obstructed and unobstructed inheritance, is distinctly laid down, as in the Benares School; and is extended to sons' sons' sons. "Obstructed heritage" is shown to be that which takes place in default of sons, son's sons, and sons' sons' sons; and is expressly identified with "the order of succession of one dying separated and not re-united."¹

4. The wife, in order to succeed, must be chaste. The author of the Vyavahara Mayukha notices rather slightly some texts restrictive of her entire power over the property, and seems to incline to the opinion that she may not give, mortgage, or sell the property to improper characters, but may give or mortgage it (and, it may be presumed, sell it) for religious purposes.² It does not appear to be stated that such restrictions, if any, extend to other females who may inherit.

6. Barren daughters and widowed daughters without sons are not mentioned as being excluded; nor is the right of a daughter limited by any condition as to her being "virtuous, &c."

A married daughter who is unprovided takes pre-

¹ Vyav. May. 42, 47, 53, 83. The leading principles are the same as those of the Benares School; but there is a difference of detail in the admission to unobstructed inheritance of the son's son's son, who, it will be remembered, has no inheritance, either unobstructed or obstructed, according to the Mitakshara.

² Vyav. May. 84. The Vyavahara Mayukha, in the same page, alludes to a doctrine of the Smriti Chandrika (*v. inf.* 59) to the effect that a wife without issue only takes the movable property; but does not appear to adopt the doctrine as recognized in the Maharashtra School.

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cedence of a married daughter possessed of wealth.¹ “Unprovided” is here defined as destitute of wealth.

S. 9. The Vyavahara Mayukha, while it assigns to father and mother the same order which they hold in the Bengal School, vigorously combats the arguments of the Mitákshara in support of the opposite view. The Vyavahara Mayukha bases its own conclusion principally on the text of Vishnu relied upon in the Bengal School.²

10-15. Half-brothers and their sons do not come in this place, but lower down in the order of inheritance (*v. inf.* No. 21). Among brothers of the whole blood, and probably among brothers' sons, the associated take precedence of the unassociated, as in other schools.³ Brothers' sons take *per stirpes*, and not *per capita*.⁴

The gotrajas commence at this point.

16-20. Brother's and half-brother's son's son, sister's and half-sister's son, and brother's daughter's son, are omitted.

• 21, &c. In the remaining order we find a very remarkable departure from all that we see in any of the other schools. First comes father's mother

¹ Vyav. May. 86.

² Vyav. May. 87, and *v. sup.* 18.

³ As this is not an instance of divergence from the Bengal School; but, on the contrary, of agreement with it, we only call attention to it here because the section of the Vyavahara Mayukha on the subject is rather difficult to understand. At p. 96, however (Chap. IV. sect. 9, par. 15, &c.), the doctrine mentioned in the text is expressly stated as to brothers, and would appear to extend to brothers' sons.

⁴ Vyav. May. 88.

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(22); then sister, who, it will be observed, has no place in any other school, and is, therefore, not numbered in the Chart. After sister come father's father (21), and half-brother (11, 12), who share the property between them; and then father's father's father (28), father's brother (23), and half-brother's son (14, 15), who, in like manner, take the property equally among them.¹ The rule as to preference of associated to unassociated seems to apply to half-brothers and their sons as well as to whole brothers.²

After the relations above mentioned come the remaining sapindas, defined as ceasing with the seventh person (inclusive of the Propositus) in ascent or descent, and then the samánodakas, who end "only when their births and family names are no longer known." The gotrajās appear to end here, for the next in order of succession are the bandhus, enumerated exactly as in the Benares School.

Lastly come, in order, the preceptor, pupil, &c., as

¹ Mr. Macnaghten (Macn. Prin. 38), professing to state the order given in the Vyavahara Mayukha, omits the last three persons altogether, and makes it appear that the heirs from brother of the whole blood to brother of the half-blood inclusive all "inherit together." We think it necessary to mention these serious errors, in order to warn the reader against them. The order, as given in the text, will be found at Vyav. May. 89. Mr. Macnaghten, even without referring to the original authority, might have been saved from error by a note at Mitáksh. 447, which correctly states this part of the devolution according to the Vyavahara Mayukha. On this, as on many other points, Shamachurn Sircar has allowed himself to be led too easily by Macnaghten, and has fallen into the same mistakes. V. Vyav. Darp. 1041.

² Vyav. May. 96, &c.

in the Benares School; with this exception, that the King, in the case of persons who are not brahmans, would appear to take precedence of the preceptor, pupil, &c.

Stridhan, according to the Maharashtra School, descends as follows:—

1-7. The two kinds called Anvádheya (defined as received after marriage from the family of her husband), and Pritena or Pritidatta (given by the husband as a token of affection), go equally among sons and unmarried daughters, or, if there are no such daughters, equally among sons and married daughters.¹ The kind called Yautaka (defined as given on the marriage, and the like), and all other kinds except the two mentioned above, go to daughter unmarried or unprovided, the latter word being defined as “ destitute of wealth.”

The remaining devolution appears to relate to Yautaka, and all other kinds except Anvádheya and Pritena.

In default of daughter unmarried or unprovided, any married daughter appears to succeed;² in her default, daughter's daughter, and daughter's son (5).³ Several daughters' daughters or daughters' sons take *per stirpes*, and not *per capita*.⁴ A daughter's daughter,

¹ Vyav. May. 102, 103. The Vyavahara Mayukha makes no distinction between daughter with son, &c., and daughter widowed or barren.

² Although this is not stated expressly, it seems to be implied by the words, “if there be no daughters, then the issue of those daughters succeeds” (Vyav. May. 103).

³ Probably in that order, but this is not clearly stated.

⁴ The author of the Vyavahara Mayukha uses the words, “the

it will be remembered, has no place in the Bengal School, and is, therefore, not numbered in the Chart. In default of these comes the son of the Proposita (4), and then the son's son (6). It is not stated whether the son's son's son succeeds, the words being "the sons, grandsons, and the rest."

8-10. Sons, &c., of contemporary wife are omitted.

11-14. If the marriage was according to one of the first five forms, the property goes next to the husband; but if it was according to one of the last three, it goes to the father and mother, probably in that order, as it is not stated that they take together.¹ Brother (12) is omitted.

15-20. On failure of husband, or of father and mother, as the case may be, the devolution is derived from the text as to persons "equal to mothers":² the order, however, is not corrected as in the Dáyabhaga, &c., so that the text is left to take its own course; and we have, in order, sister's son (17), husband's sister's son (18), husband's brother's son (16), brother's son (19), daughter's husband (20), husband's younger brother (15).

21, 22. Husband's father and husband's elder brother are omitted.

issue of those daughters succeeds." Then follows a text, which appears, taken alone, to limit the succession to male issue. But this is followed by the precept as to daughters' daughters and daughters' sons taking *per stirpes*, which would have no meaning if the daughter's daughter did not inherit. V. Vyav. May. 103, 104.

¹ Vyav. May. 105; but r. also 106, where a text is quoted using the words, "her mother and her father."

² Vyav. May. 106; and v. sup. 31, &c.

The "fee," or "perquisite," appears to go, as in the Benares School, to the mother, and then to the brother of the whole blood.¹

The doctrine as to reverter of the bridegroom's gifts is limited, as in the Benares School, to the case of death of the bride, without being married.²

The doctrine as to the descent of Stridhan of an unmarried woman is limited, as in the Benares School, to the case of a betrothed girl who dies without being actually married.³

DRAVIDA SCHOOL (Madras Branch).—1-3. The doctrine of inheritance *per stirpes*, and not *per capita*, is distinctly extended to sons' sons' sons.⁴ An adopted son, with an actual son, "shares a fourth part;"⁵ or "gets a fourth part;"⁶ but it is not stated whether this means a fourth part of the whole property, or a fourth share of the property taken by the actual son.⁷ The doctrine as to the succession of the son of a sudra by a female slave does not appear to be mentioned.

The right of sons and sons' sons from birth is declared, as in the Benares School,⁸ together with

¹ Vyav. May. 106.

² Vyav. May. 106.

³ Vyav. May. 107.

⁴ Smr. Chand. 101.

⁵ Smr. Chand. 158.

⁶ Smr. Chand. 159.

⁷ It has been mentioned above that the High Court of Madras, on the authority of the Sarasvati Vilása, explaining a similar passage of the Mitákshara, adopted the latter view. *V. sup.* 38, note.

⁸ Smr. Chand. 5, 6, 103, and *v. sup.* 38, &c.

its natural consequence, the restriction from free alienation by undivided co-parceners.¹ And it is expressly stated that if a co-parcener die before partition, his share "becomes extinct," and the other co-parceners take the whole property.² Sons' sons' sons have no right from birth, but only become entitled at the decease of their father's father's father.³

4. The wife, in order to succeed to the property, must be chaste.⁴ She can only inherit when the deceased was one of a divided family; and the reason is expressly stated to be (as we have argued inferentially, in treating of the Benares School), that "wherethe husband died undivided, his father, brother, or the like, who lived in union with him, takes the property of the issueless man."⁵ The restrictions on her power over the property are somewhat similar to those laid down in the Bengal School. She may mortgage or sell the property in order to discharge religious duties; and she may make gifts for religious and charitable purposes, but not for purely temporal purposes, as gifts to dancers, or the like.⁶ Indeed, it seems clear that she has no independent

¹ Smr. Chand. 5, 107, 257, &c., and *v. sup.* 39. In order that sons may make partition after the death of their father, it is not necessary that the mother be dead also; the text to that effect being held to refer only to her separate property. (Smr. Chand. 4.)

² Smr. Chand. 167, 227.

³ Smr. Chand. 103.

⁴ Smr. Chand. 164, 178.

⁵ Smr. Chand. 167.

⁶ Smr. Chand. 169, 170.

power of disposition, except for the purpose of providing funds for the discharge of religious duties.¹ If she have no issue, she can only inherit the movable property.² The various restrictions existing in the case of a wife do not appear to be expressly extended to daughters or other females.

6. The words “with son,” &c., are not used, but “barren daughters, and the like,” are excluded. Unprovided married daughters take first, and the word “unprovided” is defined as unprovided with wealth, *not* unprovided with offspring.³

8, 9. The author of the Smriti Chandrika condemns the arguments of the Mitákshara in favour of placing mother before father even more violently than the Vyavahara Mayukha, characterizing them as “mere prattle,” “insipid argument,” and “as weak as the hold of kuca grass.” His own opinion, coinciding with that of the Bengal and Maharashtra Schools, is principally founded on the text of Vishnu.⁴ The brother, with the consent of the mother, may inherit before her.⁵

10–15. Although the brother, in one part of the Smriti Chandrika, is stated to come next to the mother, yet the father’s mother (22), in another passage, is quite as distinctly placed before him.⁶ We are not,

¹ Smr. Chand. 4, 170.

² Smr. Chand. 168.

³ Smr. Chand. 189–191.

⁴ Smr. Chand. 194–196, and *v. sup.* 18.

⁵ Smr. Chand. 201.

⁶ Smr. Chand. 198, 201, 219. The translator adopts a decided view on this subject, probably from having overlooked

22. Father's mother has been mentioned *sup.* (Nos. 10-15).

23, &c. At this point the gotrajās begin, and the remaining devolution may be described in a few words. The property goes, in order, to the son and grandson successively of the several male descendants through males, ending with the son's son of the twelfth in ascent, exclusive of the Propositus himself. The first six of these male descendants are held to be the sapindas, the remaining six, the samānodakas or sakulyas. Here the gotrajās appear to end; and then come, in order, the bandhus, who are enumerated precisely as in the Benares, Mithila, and Maharashtra Schools.

It will thus be seen that father's brother's son's son (25), father's brother's daughter's son (27), and the corresponding higher relations (32, 34) are omitted; and father's father's mother (29) also is omitted; while father's sister's son and father's father's sister's son (26, 33) are deprived of their places in the Chart, and placed lower down, among the bandhus. It will be observed that father's father (21), father's father's father (28), and the other descendants in the uninterrupted male line (except father, whose place is given *sup.*), are not enumerated under those names, but come in, concurrently with their own brothers, in the character of father's father's son,

¹ Thus, for instance, father's father (21) inherits together with father's father's brother (30). This is the only possible interpretation consistent with the admission of such ancestors to any share at all; and it would seem, therefore, to be reasonably put forward by the translator of the Smṛiti Chandrika (v. Smr. Chand. 211, note.)

After the bandhus come, in order—

Preceptor.

Pupil.

Fellow-student.

Then, in the case of a brahman—

Brahman learned in the three Vedas, &c.

Any brahman.

And, in the case of a person of any other class—

The King.¹

Stridhan, according to this school, descends as follows :—

1-6. The two kinds called Anvádheya and Pritena² go equally among sons and daughters, no difference being drawn between married and unmarried daughters, but widows being excluded. The kind called Yautaka, or given at the nuptials, goes to the unmarried daughter, or, if there be no such daughter, then to the son.³ All other kinds, called collectively “Adhyagni and the like,” go equally to unmarried daughters and daughters married and unprovided; the word “unprovided” being here

¹ Smr. Chand. 217. It will be observed that the Smriti Chandrika gives “brahman learned in the three Vedas,” &c., and then “any brahman.” The Mitákshara, on the other hand, gives “venerable brahman,” and then “any brahman,” treating the latter as synonymous with “brahmans who have read the three Vedas,” &c. The point at which the King comes in is not described, in the Smriti Chandrika, so clearly as could be wished; but we believe we have assigned to him his proper position.

² For the meaning of these words *v. sup. 55*; (but *v. Smr. Chand. 134.*)

³ As to the descent of Yautaka to the son, *v. Smr. Chand. 142,*

defined "issueless, unendowed ; that is, destitute of wealth, unfortunate, widowed ;"¹ in their default to daughter's daughter, then to daughter's son, then to son, then to son's son ; the inheritance among all kinds of grandchildren being *per stirpes* and not *per capita*. It will be remembered that daughter's daughter has no place in the Chart, not being included in the Bengal School.

The remaining devolution would appear to apply only to "Adhyagni, and the like."

7-10. Son's son's son is omitted ; the sons, &c., of contemporary wife are not mentioned in this place, but it is stated, later, that her "issue" succeed in default of "progeny, husband, or the like."²

11-14. In default of the above, if the marriage was according to one of the first five forms, the property goes immediately to the husband ; if according to one of the last three, it goes to the "mother and father," father's brother, brother, mother's brother, "and other similar relations," if given by such relations respectively, and, in their default, to the husband. It will be remembered that father's brother and mother's brother have no place in the Chart.

15-20. The text as to persons equal to mothers is given, but the order is not corrected as in the Bengal School ; so that the sister's son, &c., will come in the same order as in the Maharashtra School,³ instead of the order of the Chart.

¹ At this point, the doctrine of the Mitákshara as to the competition between unmarried and married daughters, &c., is expressly condemned (Smr. Chand. 140).

² Smr. Chand. 147.

³ V. sup. 56.

21, 22. Husband's father and husband's elder brother are omitted.

A woman's "perquisite" goes to the brother of the whole blood, and, in default of him, to the mother, even if given to her by the bridegroom himself.¹

The text as to the reverter of the bridegroom's gifts is limited to the case of death of the bride without having been married.²

It would probably be almost impossible, except by constant practice, to fix in the memory the whole of the distinctions which exist between the five schools; but it may be useful, as well as interesting, to bear in mind a few of the special doctrines of each, and we shall conclude this chapter by mentioning some of these characteristic features, without, however, attempting to give a complete recapitulation.

The Bengal School is distinguished from the other schools by its repudiation of the doctrine of a right from birth; by the admission of brothers' and half-brothers' sons' sons, sisters' and half-sisters' sons, brothers' daughters' sons, and the higher corresponding relations; by its enumeration of the maternal relations (Nos. 35-49), immediately after the sapindas; by its omitting the set of nine bandhus recognized in the other schools (except those of them who are brought into the order of inheritance in other places); and by its peculiar definitions of sapindas and other classes of relations.

The Benares School is peculiar in omitting the

¹ Smr. Chand. 145.

² Smr. Chand. 145.

son's son's son, in the absence of all mention of the restrictions found elsewhere as to a wife's rights over property inherited by her, in making no distinction between Stridhan given at the nuptials, Stridhan not so given, &c., and in distinguishing the different forms of marriage, as the first four and the last four, instead of the first five and the last three.

The doctrines of the Mithila School are so loosely described in the Viváda Chintamáni, that it is often impossible to determine, by an examination of that work, whether they differ from those of other schools or not. It may safely be asserted, however, that this school is unique in placing the daughter's son after the mother and father.

The Maharashtra School differs from all other schools as to the order of inheritance after the mother, and is especially eccentric in admitting the sister, and in giving the property jointly, after her, to the father's father and the half-brother, and, in their default, to the father's father's father, the father's brother, and the half-brother's son.

The Dravida School (Madras branch) stands apart from the rest in (perhaps) placing the father's mother before the brother, in refusing to the associated half-blood an equality with the unassociated whole blood, and in giving father's father, father's father's father, &c., no place of their own, but only a place concurrently with their brothers who are not ancestors of the deceased.

The above appear to be the most striking points in which the several schools differ from one another. The reader, with the help of this Chapter and

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Chapter II., can easily complete the list, and can also ascertain what doctrines are concurrently recognized by any two or more schools, and what general principles are common to all.

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